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SENATE BILL 397

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO CHILDREN; ENACTING PROVISIONS RELATING TO FOREIGN
ADOPTIONS; AMENDING SECTIONS OF THE ADOPTION ACT; MAKING
APPROPRIATIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-5-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 130, as amended) is amended to read:

"32A-5-3. DEFINITIONS. -- As used in the Adoption Act:

- A. "adoptivee" means a person who is the subject of an adoption petition;
- B. "agency" means a person certified, licensed or otherwise specially empowered by law to place a child in a home in this or any other state for the purpose of adoption;
- C. "agency adoption" means an adoption when the adoptivee is in the custody of an agency prior to placement;

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1 D. "acknowledged father" means a father who:

2 (1) acknowledges paternity of the adoptee
3 pursuant to the putative father registry, as provided for in
4 Section 32A-5-20 NMSA 1978;

5 (2) is named, with his consent, as the
6 adoptee's father on the adoptee's birth certificate;

7 (3) is obligated to support the adoptee under
8 a written voluntary promise or pursuant to a court order; or

9 (4) has openly held out the adoptee as his own
10 child by establishing a custodial, personal or financial
11 relationship with the adoptee as follows:

12 (a) for an adoptee under six months old
13 at the time of placement: 1) has initiated an action to
14 establish paternity; 2) is living with the adoptee at the time
15 the adoption petition is filed; 3) has lived with the mother a
16 minimum of ninety days during the two-hundred-eighty-day period
17 prior to the birth or placement of the adoptee; 4) has lived
18 with the adoptee within the ninety days immediately preceding
19 the adoptive placement; 5) has provided reasonable and fair
20 financial support to the mother during the pregnancy and in
21 connection with the adoptee's birth in accordance with his
22 means and when not prevented from doing so by the person or
23 authorized agency having lawful custody of the adoptee or the
24 adoptee's mother; 6) has continuously paid child support to the
25 mother since the adoptee's birth in an amount at least equal to

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1 the amount provided in Section 40-4-11.1 NMSA 1978, or has
2 brought current any delinquent child support payments; or 7)
3 any other factor the court deems necessary to establish a
4 custodial, personal or financial relationship with the adoptee;
5 or

6 (b) for an adoptee over six months old
7 at the time of placement: 1) has initiated an action to
8 establish paternity; 2) has lived with the adoptee within the
9 ninety days immediately preceding the adoptive placement; 3)
10 has continuously paid child support to the mother since the
11 adoptee's birth in an amount at least equal to the amount
12 provided in Section 40-4-11.1 NMSA 1978, or is making
13 reasonable efforts to bring delinquent child support payments
14 current; 4) has contact with the adoptee on a monthly basis
15 when physically and financially able and when not prevented by
16 the person or authorized agency having lawful custody of the
17 adoptee; or 5) has regular communication with the adoptee, or
18 with the person or agency having the care or custody of the
19 adoptee, when physically and financially unable to visit the
20 adoptee and when not prevented from doing so by the person or
21 authorized agency having lawful custody of the adoptee;

22 E. "alleged father" means an individual whom the
23 biological mother has identified as the biological father, but
24 the individual has not acknowledged paternity or registered
25 with the putative father registry as provided for in Section

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1 32A-5-20 NMSA 1978;

2 F. "consent" means a document:

3 (1) signed by a biological parent whereby the
4 parent grants consent to the adoption of the parent's child by
5 another; or

6 (2) whereby the department or an agency grants
7 its consent to the adoption of a child in its custody;

8 G. "convention" means the Convention on the
9 Protection of Children and Cooperation in Respect of
10 Intercountry Adoption, an international agreement crafted in
11 The Hague, Netherlands to which the United States has been a
12 party since 1994 that provides safeguards from abduction,
13 trafficking or exploitation for children involved in
14 intercountry adoptions;

15 [~~G.~~] H. "counselor" means a person certified by the
16 department to conduct adoption counseling in independent
17 adoptions;

18 [~~H.~~] I. "department adoption" means an adoption
19 when the child is in the custody of the department;

20 [~~I.~~] J. "former parent" means a parent whose
21 parental rights have been terminated or relinquished;

22 [~~J.~~] K. "full disclosure" means mandatory and
23 continuous disclosure by the investigator, agency, department
24 or petitioner throughout the adoption proceeding and after
25 finalization of the adoption of all known, nonidentifying

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1 information regarding the adoptee, including:

- 2 (1) health history;
- 3 (2) psychological history;
- 4 (3) mental history;
- 5 (4) hospital history;
- 6 (5) medication history;
- 7 (6) genetic history;
- 8 (7) physical descriptions;
- 9 (8) social history;
- 10 (9) placement history; and
- 11 (10) education;

12 [~~K-~~] L. "independent adoption" means an adoption
13 when the child is not in the custody of the department or an
14 agency;

15 M "Intercountry Adoption Act of 2000" means the
16 federal Intercountry Adoption Act of 2000 that provides
17 protections and requirements for adopting parents entering into
18 convention adoptions, for children being adopted and guidelines
19 for forums involved in actions relating to convention
20 adoptions;

21 N. "international adoption" means an adoption by a
22 United States citizen of a child resident in a foreign country
23 that is a party to the convention or an adoption of a child
24 resident in the United States by an individual residing in a
25 country other than the United States that is a party to the

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1 convention;

2 [L-] O. "investigator" means an individual
3 certified by the department to conduct pre-placement studies
4 and post-placement reports;

5 [M-] P. "office" means a place for the regular
6 transaction of business or performance of particular services;

7 [N-] Q. "parental rights" means all rights of a
8 parent with reference to a child, including parental right to
9 control, to withhold consent to an adoption or to receive
10 notice of a hearing on a petition for adoption;

11 [O-] R. "placement" means the selection of a family
12 for an adoptee or matching of a family with an adoptee and
13 physical transfer of the adoptee to the family in all adoption
14 proceedings, except in adoptions filed pursuant to Paragraphs
15 (1) and (2) of Subsection C of Section 32A-5-12 NMSA 1978, in
16 which case placement occurs when the parents consent to the
17 adoption, parental rights are terminated or parental consent is
18 implied;

19 [P-] S. "post-placement report" means a written
20 evaluation of the adoptive family and the adoptee after the
21 adoptee is placed for adoption;

22 [Q-] T. "pre-placement study" means a written
23 evaluation of the adoptive family, the adoptee's biological
24 family and the adoptee;

25 [R-] U. "presumed father" means:

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1 (1) the husband of the biological mother at
2 the time the adoptee was born;

3 (2) an individual who was married to the
4 mother and either the adoptee was born during the term of the
5 marriage or the adoptee was born within three hundred days
6 after the marriage was terminated by death, annulment,
7 declaration of invalidity or divorce; or

8 (3) before the adoptee's birth, an individual
9 who attempted to marry the adoptee's biological mother by a
10 marriage solemnized in apparent compliance with law, although
11 the attempted marriage is or could be declared invalid and if
12 the attempted marriage:

13 (a) could be declared invalid only by a
14 court, the adoptee was born during the attempted marriage or
15 within three hundred days after its termination by death,
16 annulment, declaration of invalidity or divorce; or

17 (b) is invalid without a court order,
18 the adoptee was born within three hundred days after the
19 termination of cohabitation;

20 [S.] V. "record" means any petition, affidavit,
21 consent or relinquishment form, transcript or notes of
22 testimony, deposition, power of attorney, report, decree,
23 order, judgment, correspondence, document, photograph, invoice,
24 receipt, certificate or other printed, written, videotaped or
25 tape-recorded material pertaining to an adoption proceeding;

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1 ~~[F.]~~ W. "relinquishment" means the document by
2 which a parent relinquishes parental rights to the department
3 or an agency to enable placement of the parent's child for
4 adoption;

5 ~~[U.]~~ X. "resident" means a person who, prior to
6 filing an adoption petition, has lived in the state for at
7 least six months immediately preceding filing of the petition
8 for adoption or a person who has become domiciled in the state
9 by establishing legal residence with the intention of
10 maintaining the residency indefinitely; and

11 ~~[V.]~~ Y. "stepparent adoption" means an adoption of
12 the adoptee by the adoptee's stepparent when the adoptee has
13 lived with the stepparent for at least one year following the
14 marriage of the stepparent to the custodial parent. "

15 Section 3. Section 32A-5-6 NMSA 1978 (being Laws 1993,
16 Chapter 77, Section 133, as amended) is amended to read:

17 "32A-5-6. AUTHORITY OF THE DEPARTMENT. --

18 A. The department may adopt and promulgate
19 necessary regulations and forms for the administration of the
20 Adoption Act, but the regulations shall not conflict with the
21 provisions of the Adoption Act.

22 B. The department has the authority to provide or
23 request additional information from an investigator or an
24 attorney representing any person involved in ~~[any]~~ an action
25 filed pursuant to the provisions of the Adoption Act.

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1 C. The department has the authority to intervene in
2 [~~any~~] an action filed pursuant to the provisions of the
3 Adoption Act. The intervention shall be effected when legal
4 counsel for the department files a motion for an entry of
5 appearance and an appropriate response.

6 D. The department shall be served by mail by the
7 attorney for the petitioner with copies of all pleadings filed
8 in [~~any~~] an action pursuant to the provisions of the Adoption
9 Act, except for copies of the petition for adoption, the
10 request for placement and the decree of adoption, which shall
11 be served as provided in Section 32A-5-7 NMSA 1978.

12 E. The department is authorized to impose fees in
13 the following amounts for the following purposes:

14 (1) up to fifty dollars (\$50.00) to conduct a
15 background check pursuant to the Adoption Act; and

16 (2) up to three hundred dollars (\$300) to
17 conduct site visits to an agency seeking certification from the
18 department to coordinate international adoptions.

19 F. The fees imposed by the department pursuant to
20 this section are appropriated to the department for the
21 expenses incurred by department staff and peer reviewers who
22 participate in the process of certifying agencies to coordinate
23 international adoptions and to cover expenses incurred in
24 conducting pre-placement studies or other investigations
25 required to implement the provisions of the Adoption Act."

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1 Section 4. Section 32A-5-26 NMSA 1978 (being Laws 1993,
2 Chapter 77, Section 153, as amended) is amended to read:

3 "32A-5-26. PETITION--CONTENT. --A petition for adoption
4 shall be filed and verified by the petitioner and shall allege:

5 A. the full name, age and place and duration of
6 residence of the petitioner and, if married, the place and date
7 of marriage; the date and place of any prior marriage,
8 separation or divorce; and the name of any present or prior
9 spouse;

10 B. the date and place of birth of the adoptee, if
11 known;

12 C. the places where the adoptee has lived within
13 the past three years and the names and addresses of the persons
14 with whom the adoptee has lived, unless the adoptee is in the
15 custody of an agency or the department, in which case the
16 petitioner shall state the name and address of the agency or
17 the department's county office from which the child was placed;

18 D. the birth name of the adoptee, any other names
19 by which the adoptee has been known and the adoptee's proposed
20 new name; provided that in the case of an agency adoption, if
21 the petitioner and the biological parents have not agreed to
22 the release of the adoptee's identity to the other person, the
23 birth name and any other names by which the adoptee has been
24 known shall be filed with the court as separate documents at
25 the time the petition is filed;

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1 E. where the adoptee is residing at the time of the
2 filing of the petition and, if the adoptee is not living with
3 the petitioner, when the adoptee will commence living with the
4 petitioner;

5 F. that the petitioner desires to establish a
6 parent and child relationship with the adoptee and that the
7 petitioner is a fit and proper person able to care and provide
8 for the adoptee's welfare;

9 G. the existence of any court orders, including
10 placement orders, that are known to the petitioner and that
11 regulate custody, visitation or access to the adoptee, copies
12 of which shall accompany and be attached to the petition as
13 exhibits;

14 H. the relationship, if any, of the petitioner to
15 the adoptee;

16 I. the name and address of the placing agency, if
17 any;

18 J. the names and addresses of all persons from whom
19 consents or relinquishments are required, attaching copies of
20 those obtained and alleging the facts that excuse or imply the
21 consents or relinquishments of the others; provided that if the
22 petitioner has not agreed to the release of his identity to the
23 parent or if the parent has not agreed to the release of his
24 identity to the petitioner, the names and addresses of all
25 persons from whom consents or relinquishments are required

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1 shall be filed with the court as separate documents at the time
2 the petition for adoption is filed;

3 K. whether the adoption will be an open adoption,
4 pursuant to the provisions of Section 32A-5-35 NMSA 1978;

5 L. when consent of the child's father is alleged to
6 be unnecessary, the results of a search of the putative father
7 registry;

8 M. whether the adoptee is an Indian child and, if
9 so, the petition shall allege:

10 (1) the tribal affiliation of the adoptee's
11 parents;

12 (2) what specific actions have been taken and
13 by whom to notify the parents' tribe and the results of the
14 contact, including the names, addresses, titles and telephone
15 numbers of the persons contacted. Copies of any correspondence
16 with the Indian tribe shall be attached as exhibits to the
17 petition; and

18 (3) what specific efforts were made to comply
19 with the placement preferences set forth in the federal Indian
20 Child Welfare Act of 1978 or the placement preferences of the
21 appropriate Indian tribe;

22 N. whether the adoption is subject to the
23 Interstate Compact on the Placement of Children and, if so, a
24 copy of the interstate compact form indicating approval shall
25 be attached as an exhibit to the petition;

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1 0. whether the adoptee is foreign born and, if so,
2 copies of the child's passport and United States visa and of
3 all documents demonstrating that the adoptee is legally free
4 for adoption and in international adoptions, shall include a
5 certificate from the United States secretary of state regarding
6 each adoption; and

7 P. the name, address and telephone number of the
8 agency or individual who has agreed to conduct the post-
9 placement report in accordance with Section 32A-5-31 NMSA 1978,
10 if different than the agency or individual who prepared the
11 pre-placement study in accordance with Section 32A-5-13 NMSA
12 1978. "

13 Section 5. Section 32A-5-36 NMSA 1978 (being Laws 1993,
14 Chapter 77, Section 163, as amended) is amended to read:

15 "32A-5-36. ADJUDICATION--DISPOSITION--DECREE OF
16 ADOPTION.--

17 A. The court shall conduct hearings on the petition
18 for adoption so as to determine the rights of the parties in a
19 manner that protects confidentiality. The petitioner and the
20 adoptee shall attend the hearing unless the court for good
21 cause waives a party's appearance. Good cause may include
22 burdensome travel requirements.

23 B. The petitioner shall file all documents required
24 pursuant to the Adoption Act and serve the department with
25 copies of the [~~same~~] documents simultaneously with the request

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1 for hearing on the petition for adoption.

2 C. If any person who claims to be the biological
3 father of the adoptee has appeared before the court and filed a
4 written petition or response seeking custody and assuming
5 financial responsibility of the adoptee, the court shall hear
6 evidence as to the merits of the petition. If the court
7 determines by a preponderance of the evidence that the person
8 is not the biological father of the adoptee or that the child
9 was conceived through an act of rape or incest, the petition
10 shall be dismissed and the person shall no longer be a party to
11 the adoption. If the court determines that the person is the
12 biological father of the adoptee, the court shall further
13 determine whether the person qualifies as a presumed or
14 acknowledged father whose consent is necessary for adoption,
15 pursuant to Section 32A-5-17 NMSA 1978. If the court
16 determines that the person is the biological father, but does
17 not qualify as a presumed or acknowledged father, the court
18 shall adjudicate the person's rights pursuant to the provisions
19 of the Adoption Act.

20 D. If the mother or father of the adoptee has
21 appeared before the court and filed a written petition that
22 alleges the invalidity of the mother's or father's own consent
23 or relinquishment for adoption previously filed in the adoption
24 proceeding, the court shall hear evidence as to the merits of
25 the petition. If the court determines that the allegations

1 have not been proved by a preponderance of the evidence, the
2 petition shall be dismissed. If the court determines that the
3 allegations of the petition are true, the consent or
4 relinquishment for adoption shall be held invalid, and the
5 court shall determine, in the best interests of the adoptee,
6 the person who shall have custody of the child.

7 E. The petitioner shall present and prove each
8 allegation set forth in the petition for adoption by clear and
9 convincing evidence.

10 F. The court shall grant a decree of adoption if it
11 finds that the petitioner has proved by clear and convincing
12 evidence that:

13 (1) the court has jurisdiction to enter a
14 decree of adoption affecting the adoptee;

15 (2) the adoptee has been placed with the
16 petitioner for a period of ninety days if the adoptee is under
17 the age of one year at the time of placement or for a period of
18 one hundred eighty days if the adoptee is one year of age or
19 older at the time of placement, unless, for good cause shown,
20 the requirement is waived by the court;

21 (3) all necessary consents, relinquishments,
22 terminations or waivers have been obtained;

23 (4) the post-placement report required by
24 Section 32A-5-31 NMSA 1978 has been filed with the court;

25 (5) service of the petition for adoption has

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1 been made or dispensed with as to all persons entitled to
2 notice pursuant to provisions of Section 32A-5-27 NMSA 1978;

3 (6) at least ninety days have passed since the
4 filing of the petition for adoption, except the court may
5 shorten or waive this period of time in cases in which the
6 child is being adopted by a stepparent, a relative or a person
7 named in the child's deceased parent's will pursuant to
8 provisions of Section 32A-5-12 NMSA 1978;

9 (7) the petitioner is a suitable adoptive
10 parent and the best interests of the adoptee are served by the
11 adoption;

12 (8) if visitation between the biological
13 family and the adoptee is contemplated, that the visitation is
14 in the child's best interests;

15 (9) if the adoptee is foreign born, the child
16 is legally free for adoption and with respect to each
17 international adoption, that a certificate from the United
18 States secretary of state has been filed with the court;

19 (10) the results of the criminal records check
20 required pursuant to provisions of Section 32A-5-14 NMSA 1978
21 have been received and considered;

22 (11) if the adoptee is an Indian child, the
23 requirements set forth in the federal Indian Child Welfare Act
24 of 1978 have been met;

25 (12) when the child is an Indian child, the

1 placement preferences set forth in the federal Indian Child
2 Welfare Act of 1978 or the placement preferences of the
3 appropriate Indian tribes have been followed or, if not
4 followed, good cause for noncompliance has been clearly stated
5 and supported, as required by the federal Indian Child Welfare
6 Act of 1978 and provision has been made to ensure that the
7 Indian child's cultural ties to the Indian child's tribe are
8 protected and fostered; and

9 (13) if the adoption involves the interstate
10 placement of the adoptee, the requirements of the Interstate
11 Compact on the Placement of Children have been met.

12 G. In addition to the findings required by
13 Subsection F of this section, the court in any decree of
14 adoption shall make findings with respect to each allegation of
15 the petition.

16 H. If the court determines that any of the
17 requirements for a decree of adoption pursuant to provisions of
18 Subsections E and F of this section have not been met or that
19 the adoption is not in the best interests of the adoptee, the
20 court shall deny the petition and determine, in the best
21 interests of the adoptee, the person who shall have custody of
22 the child.

23 I. The decree of adoption shall include the new
24 name of the adoptee and shall not include any other name by
25 which the adoptee has been known or the names of the former

1 parents. The decree of adoption shall order that from the date
2 of the decree, the adoptee shall be the child of the petitioner
3 and accorded the status set forth in Section 32A-5-37 NMSA
4 1978.

5 J. A decree of adoption shall be entered within six
6 months of the filing of the petition if the adoptee is under
7 the age of one year at the time of placement or twelve months
8 if the adoptee is one year of age or older at the time of
9 placement, except that the time may be extended by the court
10 upon request of any of the parties or upon the court's own
11 motion for good cause shown.

12 K. A decree of adoption may not be attacked upon
13 the expiration of one year from the entry of the decree;
14 provided, however, that in any adoption involving an Indian
15 child, the Indian child's parent or Indian custodian may
16 petition the court pursuant to the provisions of the federal
17 Indian Child Welfare Act of 1978 to invalidate the adoption.

18 L. In any adoption involving an Indian child, the
19 clerk of the court shall provide the secretary of the interior
20 with a copy of any decree of adoption or adoptive placement
21 order and other information as required by the federal Indian
22 Child Welfare Act of 1978. "

23 Section 6. EMERGENCY.--It is necessary for the public
24 peace, health and safety that this act take effect immediately.